

**Title 15
LABOR**

CHAPTERS:

15-01 Minimum Wage

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* Code reviser's note: This chapter was adopted through the initiative process, approved as Proposition 414 at the November 8, 2016 election and proclaimed law by the Mayor on November 28, 2016. The provisions of this chapter may only be amended through the initiative process or as otherwise permitted by law.

15-01-001-0001 Short Title

This act may be cited as the "The Minimum Wage Act." (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0002 Definitions

- A. "City" is the City of Flagstaff.
- B. "Office" is the department, division or office that the City shall establish, create or designate to enforce this chapter.
- C. "Employ" includes to suffer or permit to work.
- D. "Employee" is any individual who (1) works or is expected to work twenty-five (25) hours or more in any given calendar year within the geographic boundaries of the City for an employer and (2) is or was employed by an employer.
- E. "Employer" includes any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, political subdivision of the state, individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee, and shall include the City, but does not include the state of Arizona or the United States.
- F. "Minimum Wage" is the minimum wage rate as set under Section 15-01-001-0003 of this chapter.

G. "Tip" means a verifiable sum presented by a customer as a gift or voluntary gratuity in recognition of some service performed for the customer by the employee receiving the tip.

H. "Tipped Employee" means an employee who customarily and regularly receives more than \$30 a month in tips, has been informed by the employer in writing about the tip notice provisions required by this chapter, and retains all tips that he or she receives. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0003 Minimum Wage

A. Employers shall pay employees no less than the minimum wage, which shall be not less than:

1. Ten dollars and fifty cents (\$10.50) an hour on and after July 1, 2017;
2. Eleven dollars (\$11.00) an hour on and after January 1, 2018;
3. Twelve dollars (\$12.00) an hour on and after January 1, 2019;
4. Thirteen dollars (\$13.00) an hour on and after January 1, 2020;
5. Fifteen dollars (\$15.00) an hour or two dollars (\$2.00) above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, whichever is greater, on and after January 1, 2021;
6. Fifteen dollars and fifty cents (\$15.50) an hour or two dollars (\$2.00) above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, whichever is greater, on and after January 1, 2022.

B. The minimum wage shall be increased on January 1, 2023 and on January 1 of successive years, by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents (\$0.05).

C. In the event that the federal minimum wage is increased above the level of the minimum wage that is in force under this section, the minimum wage under this section shall be increased to match the higher federal wage, effective on the same date as the increase in the federal minimum wage, and shall become the new minimum wage in effect under this section.

D. Employees entitled to overtime pay under the federal Fair Labor Standards Act, 29 U.S.C. §§ 206, 207, 213 are entitled to overtime pay under this chapter in accordance with federal law and regulations concerning overtime compensation under 29 U.S.C. §§ 206, 207, 213. Such overtime pay shall be calculated based on the employee's regular rate of pay or the minimum wage rate set forth in this section, whichever is higher.

- E. For any tipped employee, the employer may pay a cash wage up to:
1. Three dollars (\$3.00) per hour less than the minimum wage rate set forth in this section on or after July 1, 2017;
 2. Two dollars and fifty cents (\$2.50) per hour less than the minimum wage rate set forth in this section on or after January 1, 2022;
 3. Two dollars (\$2.00) per hour less than the minimum wage set forth in this section on or after January 1, 2023;
 4. One dollar and fifty cents (\$1.50) per hour less than the minimum wage set forth in this section on or after January 1, 2024;
 5. One dollar (\$1.00) per hour less than the minimum wage set forth in this section on or after January 1, 2025.

Provided, however, that the employer may only pay this lower cash wage if the employer can establish that for each week, when adding tips received and retained to wages paid, the employee received not less than the minimum wage for all hours worked and the employee has been informed in writing by the employer of the provisions of this section. All tips received by tipped employees are the sole property of the tipped employee and shall be retained by the tipped employee, except that nothing in this section shall prohibit a valid tip pool under which tips are pooled and distributed among tipped employees; provided, that only the amount actually retained by each employee shall be considered part of that employee's wages for purposes of this section. On and after January 1, 2026, an employer shall pay a tipped employee not less than the minimum wage set forth in this section for all hours worked. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016; Ord. 2017-08, Amended, 03/21/2017; Ord. 2017-23, Amended, 07/05/2017)

15-01-001-0004 Notice and Recordkeeping Requirements

- A. The Office shall publish and make available to employers all of the following, in English, Spanish and any language spoken by more than 5% of the workforce in the City: (1) a bulletin announcing the adjusted minimum wage rate for the upcoming year and its effective date no less than two months before its effective date; (2) a template bulletin for employers to post in the workplace informing employees of the current minimum wage rate and their rights to the minimum wage, including information about the right to be free from retaliation and the right to file a complaint and the contact information for the Office; and (3) a template notice suitable for use by employers in complying with subsections B and C of this section.
- B. Every employer shall post the bulletin referred to in subsection A in a conspicuous place at any workplace or job site in English, Spanish and any language spoken by at least 5% of the employees at the workplace or job site.
- C. Every employer shall also provide each employee, at the time of hire or by July 1, 2017 whichever is later,

written notice of: the employer's business name, address, and telephone number; the employee's right to earn the minimum wage and the current minimum wage rate; the employee's right to be free from retaliation; the employee's right to file a complaint; and the contact information for the Office where questions about rights and responsibilities under this chapter can be answered. If the employee's primary language is one spoken by at least 5% of the employees at the workplace or jobsite, the notice required by this subsection shall be provided in English and in the employee's primary language.

D. Every employer shall maintain payroll records showing the hours worked for each day worked, and the wages paid to all employees for a period of four years and shall allow the Office access to such records to monitor compliance. Failure to maintain such records and/or allow the Office reasonable access to such records shall raise a rebuttable presumption that the employer did not pay the required minimum wage and the employee's reasonable estimate regarding hours worked and wages paid shall be relied on, absent clear and convincing evidence otherwise. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0005 Retaliation Prohibited

A. No employer or other person shall discharge or take any other adverse action against any person in retaliation for asserting any claim or right under this chapter, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0006 Implementation, Investigation and Enforcement

A. Administrative Hearing Process. To the extent allowable under state law, the City shall have the authority to coordinate implementation and enforcement of this chapter, including but not limited to establishing a civil administrative hearing process, including procedural rules, whereby the city shall receive employee complaints in writing and by telephone, investigate and prosecute complaints it deems meritorious and keep complainants notified regarding the status of the investigation. An administrative hearing judge shall hear and adjudicate the case and enter appropriate rulings pursuant to this chapter.

B. The Office may investigate any possible violations of this chapter by an employer or other person. Any person or organization may file an administrative complaint with the Office charging that an employer has violated this chapter as to any employee or other person. When the Office receives a complaint, it may review records regarding all employees at the employer's worksite in order to protect the identity of any employee identified in the complaint and to determine whether a pattern of violations has occurred. The name of any employee identified in the complaint shall be kept confidential as long as possible. Where the Office determines that an employee's name must be disclosed in order to investigate a complaint further, it may do so only with the employee's consent.

C. To the extent allowable by law, a civil action to enforce this chapter may be maintained in the Flagstaff

Municipal Court or in any court of competent jurisdiction by the City or by any private party injured by a violation of this chapter. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0007 Civil Penalties and Remedies

- A. Any employer who fails to pay the wages required under this chapter shall be required to pay the employee the balance of wages owed, including interest thereon at a rate of ten percent (10%) per annum, and an additional amount equal to twice the underpaid wages as liquidated damages.
- B. Any employer who retaliates against an employee or other person in violation of this chapter shall be required to pay the employee a penalty set by the Office or a court sufficient to compensate the employee and deter future violations, but not less than \$250 for each day that the violation continued or until legal judgment is final. In any case where an Employee has been discharged in retaliation for exercising rights under this ordinance, the period of violation extends from the day of discharge until the day the Employee is reinstated, the day the Employee agrees to waive reinstatement or, in the case of an Employee who may not be rehired, from the day of discharge until the day legal judgment is final.
- C. Any employer who violates the recordkeeping, posting or other requirements that the Office may establish under this chapter shall be subject to a civil penalty payable to the City of at least \$250 for a first violation, and least \$1,000 for each subsequent or willful violation and may, if the Office or Court determines appropriate, be subject to special monitoring and inspections. In order to compensate the City for the costs of investigating and remedying violations under this chapter, the Office may also order a violating employer or person to pay to the City a civil penalty of not more than fifty dollars (\$50.00) for each day and for each employee or person as to whom a violation of this chapter occurred or continued. To the extent allowable by law, such funds shall be allocated to the Office and shall be used to offset the costs of implementing and enforcing this chapter. Not less than fifty percent (50%) of such funds, and of any other civil penalties assessed and retained by the City pursuant to this chapter, shall be earmarked for the funding of the community-based outreach program provided for in this Section.
- D. The Office and the courts shall have the authority to order payment of such unpaid wages, liquidated damages, and civil penalties and to order any other appropriate legal or equitable relief for violations of this chapter. To the extent allowable by law, civil penalties paid to the City shall be retained by the Office and used to finance activities to enforce this chapter. A prevailing plaintiff shall be entitled to reasonable attorneys' fees and costs of suit from a violating employer.
- E. A civil action to enforce this chapter may be commenced no later than two years after a violation last occurs, or three years in the case of a willful violation, and may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. The statute of limitations for bringing a civil action shall be tolled during any investigation of an employer by the Office or other law enforcement officer, but such investigation shall not bar a person from bringing a civil action under this chapter. The requirements of this chapter may also be enforced by the City Attorney. In such case, unpaid wages and damages recovered shall

be payable to the individual Employee as to whom the violation occurred. No verbal or written agreement or employment contract may waive any rights under this chapter.

F. The Office shall establish an education and outreach program in partnership with community-based organizations to conduct education and outreach to employees and employers of their rights and obligations under this chapter. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016; Ord. 2017-23, Amended, 07/05/2017)

15-01-001-0008 Other Legal Requirements

A. Nothing in this chapter shall be interpreted or applied so as to create a conflict with Federal or State law.

B. This chapter provides minimum requirements and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy, or standard that provides for greater protections to employees. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016; Ord. 2017-23, Amended, 07/05/2017)

15-01-001-0009 No Effect on More Generous Policies

A. Nothing in this chapter shall be construed to discourage or prohibit the adoption or retention of a wage policy more generous than that which is required herein.

B. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous wages to an employee than required herein. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0010 Savings Clause

This act does not affect rights and duties that matured, penalties that were incurred and proceedings that were begun before the effective date of this act. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

15-01-001-0011 Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)